

1                                   **DEPARTMENT OF ENVIRONMENTAL QUALITY**  
2       **Establishment of permit(s) by rule for the construction and operation of small**  
3                                   **renewable energy projects (combustion)**

4  
5  
6                                   CHAPTER 70  
7       SMALL RENEWABLE ENERGY PROJECTS (COMBUSTION) PERMIT BY RULE  
8                                   Part I  
9                                   Definitions and Applicability

10   **9VAC15-70-10. Definitions.**

11       The following words and terms when used in this chapter shall have the following  
12 meanings unless the context clearly indicates otherwise:

13       "Applicant" means the owner or operator who submits an application to the  
14 department for a permit by rule pursuant to this chapter.

15       "Archive search" means a search of DHR's cultural resource inventory for the  
16 presence of previously recorded archaeological sites and for architectural structures and  
17 districts.

18       "Coastal Avian Protection Zones" or "CAPZ" means the areas designated on the  
19 map of "Coastal Avian Protection Zones" generated on the department's Coastal GEMS  
20 geospatial data system (9VAC15-70-120 C 1).

21       "Combustion energy project," or "project" means a small renewable energy project  
22 that

- 23       i.   Is an electrical generation facility with a rated capacity not exceeding 20  
24           megawatts that generates electricity only from biomass, energy from waste,  
25           or municipal solid waste; and  
26       ii.   utilizes a fuel or feedstock which is addressed as a regulated solid waste by  
27           9VAC20-81, 9VAC20-60, or 9VAC20-120; is defined as biomass pursuant to  
28           §10.1-1308.1 of the Code of Virginia; or both.

29       "Department" means the Department of Environmental Quality, its director, or the  
30 director's designee.

31       "DCR" means the Department of Conservation and Recreation.

32       "DGIF" means the Department of Game and Inland Fisheries.

33       "DHR" means the Department of Historic Resources.

34       "Disturbance zone" means the area within the site directly impacted by construction  
35 and operation of the combustion energy project.

36       "Historic resource" means any prehistoric or historic district, site, building, structure,  
37 object, or cultural landscape that is included or meets the criteria necessary for inclusion  
38 in the Virginia Landmarks Register pursuant to the authorities of § 10.1-2205 of the  
39 Code of Virginia and in accordance with 17VAC5-30-40 through 17VAC5-30-70.

40       "Interconnection point" means the point or points where the combustion energy  
41 project connects to a project substation for transmission to the electrical grid.

42       "Natural heritage resource" means the habitat of rare, threatened, or endangered  
43 plant and animal species, rare or state significant natural communities or geologic sites,  
44 and similar features of scientific interest benefiting the welfare of the citizens of the  
45 Commonwealth.

46 "Operator" means the person responsible for the overall operation and management  
47 of a combustion energy project.

48 "Owner" means the person who owns all or a portion of a combustion energy project.

49 "Parking lot" means an improved area, usually divided into individual spaces and  
50 covered with pavement or gravel, intended for the parking of motor vehicles.

51 "Permit by rule" means provisions of the regulations stating that a project or activity  
52 is deemed to have a permit if it meets the requirements of the provision.

53 "Person" means any individual, partnership, firm, association, joint venture, public or  
54 private corporation, trust, estate, commission, board, public or private institution, utility,  
55 cooperative, county, city, town, or other political subdivision of the Commonwealth, any  
56 interstate body, or any other legal entity.

57 "Parasitic load" means the maximum amount of electricity (in megawatts or kilowatts)  
58 a combustion energy project uses to run its electricity-producing processes while  
59 operating at the rated capacity.

60 "Pre-construction" means any time prior to commencing land-clearing operations  
61 necessary for the installation of energy-generating structures at the combustion energy  
62 project.

63 "Rated capacity" means the maximum designed electrical generation capacity (in  
64 megawatts or kilowatts) of a combustion energy project, minus the parasitic load;  
65 sometimes known as "net capacity."

66 "Site" means the area encompassed by the combustion energy project, plus  
67 appurtenant structures and facilities such as fuel processing, delivery, storage and  
68 associated conveyance equipment areas if they (a) are contiguous and (b) primarily exist  
69 to supply fuel for the generation of electricity at that project, to the extent that these  
70 areas are under common ownership or operating control by the owner or operator of the  
71 combustion energy project.

72 "Small renewable energy project" means (i) an electrical generation facility with a  
73 rated capacity not exceeding 100 megawatts that generates electricity only from  
74 sunlight, wind, falling water, wave motion, tides, or geothermal power, or (ii) an electrical  
75 generation facility with a rated capacity not exceeding 20 megawatts that generates  
76 electricity only from biomass, energy from waste, or municipal solid waste.

77 "T&E," "state threatened or endangered species," or "state-listed species" means  
78 any wildlife species designated as a Virginia endangered or threatened species by DGIF  
79 pursuant to the § 29.1-563-570 of the Code of Virginia and 4VAC15-20-130.

80 "VLR" means the Virginia Landmarks Register (9VAC15-70-120 B 1).

81 "VLR-eligible" means those historic resources that meet the criteria necessary for  
82 inclusion on the VLR pursuant to 17VAC5-30-40 through 17VAC5-30-70 but are not  
83 listed in VLR.

84 "VLR-listed" means those historic resources that have been listed in the VLR in  
85 accordance with the criteria of 17VAC5-30-40 through 17VAC5-30-70.

86 "Wildlife" means wild animals; except, however, that T&E insect species shall only be  
87 addressed as part of natural heritage resources and shall not be considered T&E  
88 wildlife.

91 **9VAC15-70-20. Authority and applicability.**

- 92 A. This regulation is issued under authority of Article 5 (§ 10.1-1197.5 et seq.) of  
93 Chapter 11.1 of Title 10.1 of the Code of Virginia. The regulation contains  
94 requirements for combustion energy projects that are designed for, or capable of,  
95 operation at a rated capacity equal to or less than 20 megawatts.
- 96 B. The department has determined that a permit by rule is required for combustion  
97 energy projects with a rated capacity greater than five (5) megawatts, provided  
98 that the projects do not otherwise meet the criteria for Part III (9VAC15-70-130)  
99 of this chapter; and this regulation contains the permit by rule provisions for these  
100 projects in Part II (9VAC15-70-30 et seq.) of this chapter.
- 101 C. The department has determined that different provisions should apply to projects  
102 that meet the criteria as set forth in Part III (9VAC15-70-130) of this chapter, and  
103 this regulation contains the requirements, if any, for these projects in Part III  
104 (9VAC15-70-130) of this chapter. Projects that meet the criteria for Part III of this  
105 chapter are deemed to be covered by the permit by rule.

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107  
108 **Part II**

109 **Permit by Rule Provisions for Combustion Energy Projects with Rated Capacity Greater**  
110 **Than 5 Megawatts and Not Otherwise Meeting Criteria for Part III**

111  
112 **9VAC15-70-30. Application**

113 A. The owner or operator of a combustion energy project with a rated capacity  
114 greater than five (5) megawatts, provided that the project does not otherwise meet the  
115 criteria for Part III (9VAC15-70-130) of this chapter, shall submit to the department a  
116 complete application, in which he satisfactorily accomplishes all of the following:

- 117 1. In accordance with § 10.1-1197.6 B 1 of the Code of Virginia, and as early in  
118 the project development process as practicable, furnishes to the department a  
119 notice of intent, to be published in the Virginia Register, that he intends to submit  
120 the necessary documentation for a permit by rule for a small renewable energy  
121 project;
- 122 2. In accordance with § 10.1-1197.6 B 2 of the Code of Virginia, furnishes to the  
123 department a certification by the governing body of the locality or localities  
124 wherein the small renewable energy project will be located that the project  
125 complies with all applicable land use ordinances;
- 126 3. In accordance with § 10.1-1197.6 B 3 of the Code of Virginia, furnishes to the  
127 department copies of all interconnection studies undertaken by the regional  
128 transmission organization or transmission owner, or both, on behalf of the small  
129 renewable energy project;
- 130 4. In accordance with § 10.1-1197.6 B 4 of the Code of Virginia, furnishes to the  
131 department a copy of the final interconnection agreement between the small  
132 renewable energy project and the regional transmission organization or  
133 transmission owner indicating that the connection of the small renewable energy  
134 project will not cause a reliability problem for the system. If the final agreement is  
135 not available, the most recent interconnection study shall be sufficient for the  
136 purposes of this section. When a final interconnection agreement is complete, it  
137 shall be provided to the department. The department shall forward a copy of the  
138 agreement or study to the State Corporation Commission;

139 5. In accordance with § 10.1-1197.6 B 5 of the Code of Virginia, furnishes to the  
140 department a certification signed by a professional engineer licensed in Virginia  
141 that the maximum generation capacity of the combustion energy project, as  
142 designed, does not exceed 20 megawatts;

143 6. In accordance with § 10.1-1197.6 B 6 of the Code of Virginia, furnishes to the  
144 department an analysis of potential environmental impacts of the small  
145 renewable energy project's operations on attainment of national ambient air  
146 quality standards;

147 7. In accordance with § 10.1-1197.6 B 7 of the Code of Virginia, furnishes to the  
148 department, where relevant, an analysis of the beneficial and adverse impacts of  
149 the proposed project on natural resources. The owner or operator shall perform  
150 the analyses prescribed in 9VAC15-70-40. For wildlife, that analysis shall be  
151 based on information on the presence, activity, and migratory behavior of wildlife  
152 to be collected at the site for a period of time dictated by the site conditions and  
153 biology of the wildlife being studied, not exceeding 12 months;

154 8. In accordance with § 10.1-1197.6 B 8 of the Code of Virginia, furnishes to the  
155 department a mitigation plan pursuant to 9VAC15-70-70 that details reasonable  
156 actions to be taken by the owner or operator to avoid, minimize, or otherwise  
157 mitigate such impacts, and to measure the efficacy of those actions; provided,  
158 however, that the provisions of 9VAC15-70-30 A 8 shall only be required if the  
159 department determines, pursuant to 9VAC15-70-50, that the information  
160 collected pursuant to § 10.1-1197.6 B 7 of the Code of Virginia and 9VAC15-70-  
161 40 indicates that significant adverse impacts to wildlife or historic resources are  
162 likely;

163 9. In accordance with § 10.1-1197.6 B 9 of the Code of Virginia, furnishes to the  
164 department a certification signed by a professional engineer licensed in Virginia  
165 that the project is designed in accordance with 9VAC15-70-80;

166 10. In accordance with § 10.1-1197.6 B 10 of the Code of Virginia, furnishes to  
167 the department an operating plan describing how any standards established in  
168 the regulations applicable to the permit by rule will be achieved.

169 11. In accordance with § 10.1-1197.6 B 11 of the Code of Virginia, furnishes to  
170 the department a detailed site plan meeting the requirements of 9VAC15-70-70;

171 12. In accordance with § 10.1-1197.6 B 12 of the Code of Virginia, furnishes to  
172 the department a certification signed by the applicant that the combustion energy  
173 project has applied for or obtained all necessary environmental permits;

174 13. Prior to authorization of the project and in accordance with §§ 10.1-1197.6 B  
175 13 and 10.1-1197.6 B 14 of the Code of Virginia, conducts a 30-day public review  
176 and comment period and holds a public meeting pursuant to 9VAC15-70-90. The  
177 public meeting shall be held in the locality or, if the project is located in more than  
178 one locality, in a place proximate to the location of the proposed project.  
179 Following the public meeting and public comment period, the applicant shall  
180 prepare a report summarizing the issues raised by the public and include any  
181 written comments received and the applicant's response to those comments. The  
182 report shall be provided to the department as part of this application; and

183 14. In accordance with 9VAC15-70-110, furnishes to the department the  
184 appropriate fee.

185 B. Within 90 days of receiving all of the required documents and fees listed in  
186 subsection A of this section, the department shall determine, after consultation with other

187 agencies in the Secretariat of Natural Resources, whether the application is complete  
188 and whether it adequately meets the requirements of this chapter, pursuant to § 10.1-  
189 1197.7 A of the Code of Virginia.

190 1. If the department determines that the application meets the requirements of  
191 this chapter, then the department shall notify the applicant in writing that he is  
192 authorized to construct and operate a combustion energy project pursuant to this  
193 chapter.

194 2. If the department determines that the application does not meet the  
195 requirements of this chapter, then the department shall notify the applicant in  
196 writing and specify the deficiencies.

197 3. If the applicant chooses to correct deficiencies in a previously submitted  
198 application, the department shall follow the procedures of this subsection and  
199 notify the applicant whether the revised application meets the requirements of  
200 this chapter within 60 days of receiving the revised application.

201 4. Any case decision by the department pursuant to this subsection shall be  
202 subject to the process and appeal provisions of the Administrative Process Act  
203 (§ 2.2-4000 et seq. of the Code of Virginia).

204  
205 **9VAC15-70-40. Analysis of the beneficial and adverse impacts on natural**  
206 **resources.**

207 A. Analyses of wildlife. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of  
208 Virginia, the applicant shall conduct pre-construction wildlife analyses. The analyses of  
209 wildlife shall include the following, if the disturbance zone exceeds 10 acres and the  
210 project does not meet the criteria of 9VAC15-70-130 B 2 a ii:

211 1. The applicant shall obtain a wildlife report and map generated from DGIF's  
212 Virginia Fish and Wildlife Information Service web-based application  
213 (9VAC15-70-120 C 3) or from a data and mapping system including the most  
214 recent data available from DGIF's subscriber-based Wildlife Environmental  
215 Review Map Service of the following: (i) T&E species within the project's  
216 disturbance zone; (ii) known wildlife species and habitat features within the  
217 project's disturbance zone and within two (2) miles of the boundary of the  
218 project's disturbance zone; and (iii) known or potential sea turtle nesting  
219 beaches located within one-half (1/2) mile of the disturbance zone.

220 2. If the height of the tallest point of the built structures exceeds 200 feet, the  
221 applicant shall consult the "Coastal Avian Protection Zones (CAPZ)" map  
222 generated on the department's Coastal GEMS geospatial data system (9VAC15-  
223 70-120 C 1) and determine whether the proposed combustion energy project  
224 disturbance zone will be located in part or in whole within one or more CAPZ.

225 B. Analyses of historic resources. To fulfill the requirements of § 10.1-1197.6 B 7 of  
226 the Code of Virginia, the applicant shall also conduct a pre-construction historic  
227 resources analysis.

228 1. Desktop survey for projects with rated capacity exceeding five (5)  
229 megawatts. The applicant shall perform a desktop survey of known VLR-listed and  
230 VLR-eligible historic resources within the project's disturbance zone and within one-  
231 half (1/2) mile of the disturbance zone boundary by means of an archives search of  
232 DHR's cultural resource inventory; and report in writing the results of the archives  
233 search to the department.

2. Architectural (direct impacts) and archaeological surveys if disturbance zone exceeds 10 acres. If the project's disturbance zone exceeds 10 acres and the project does not meet the criteria for 9VAC15-70-130 B 2 a ii, the applicant shall also meet the requirements of this subsection, and the prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archaeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline. The analysis for this subsection shall include each of the following:

a. Architectural survey (direct impacts). The applicant shall conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older, within the disturbance zone and evaluate the eligibility of any identified resource for listing in the VLR.

b. Archaeological survey. The applicant shall conduct an archaeological field survey of the disturbance zone and evaluate the eligibility of any identified archaeological site for listing in the VLR. As an alternative to performing this archaeological survey, the applicant may make a demonstration to the department that the project will not penetrate the subsurface in a manner that would threaten archaeological resources and that any necessary grading of the site prior to construction does not have the potential to adversely impact any archaeological resource.

3. Architectural survey (indirect impacts) if the tallest point of the built structures exceeds 200 feet. If the tallest point of the built structures exceeds 200 feet, the applicant shall also conduct a field survey of all architectural resources, including cultural landscapes, 50 years of age or older, within the one-half (1/2) mile of the disturbance zone boundary and evaluate the eligibility of any identified resource for listing in the VLR. The prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline.

4. Architectural survey (direct impacts) of structures 50 years of age or older. If the project will utilize or demolish existing buildings 50 years of age or older and the project does not meet the criteria for 9VAC15-70-130 B 2 c ii, the applicant shall evaluate the eligibility of any such buildings for listing in the VLR. The prescribed analysis shall be conducted by a qualified professional meeting the professional qualification standards of the Secretary of the Interior's Standards for Archaeology and Historic Preservation (9VAC15-70-120 B 2) in the appropriate discipline.

C. Analyses of other natural resources. To fulfill the requirements of § 10.1-1197.6 B 7 of the Code of Virginia, and if the project's disturbance zone exceeds 10 acres, the applicant shall also conduct a pre-construction desktop survey of natural heritage resources within the disturbance zone.

D. Summary report. The applicant shall provide to the department a report presenting the findings of the applicable studies and analyses conducted pursuant to subdivisions A, B, and C of this subsection, along with all data and supporting documents. The applicant shall assess and describe the expected beneficial and adverse impacts, if any, of the proposed project on wildlife and historic resources identified by these studies and analyses.

283  
284 **9VAC15-70-50. Determination of likely significant adverse impacts for combustion**  
285 **energy projects with rated capacity greater than 5 megawatts.**

286 A. The department shall find that significant adverse impacts to wildlife are likely  
287 whenever the wildlife analyses prescribed in 9VAC15-70-40 A document that any of the  
288 following conditions exists:

- 289 1. State-listed T&E wildlife are found to occur within the disturbance zone;  
290 2. The disturbance zone is located on or within one-half (1/2) mile of a known or  
291 potential sea turtle nesting beach;  
292 3. The disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5,  
293 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map and the  
294 height of the tallest point of the built structures exceeds 200 feet.

295 B. The department shall find that significant adverse impacts to historic resources  
296 are likely whenever the historic resources analyses prescribed by 9VAC15-70-40 B  
297 indicate that the proposed project is likely to diminish significantly any aspect of a  
298 historic resource's integrity.

299  
300 **9VAC15-70-60. Mitigation plan.**

301 A. If the department determines that significant adverse impacts to wildlife or historic  
302 resources or both are likely, then the applicant shall prepare a mitigation plan. The  
303 mitigation plan shall include a description of the affected wildlife or historic resources,  
304 or both, and the impact to be mitigated; a description of actions that will be taken to  
305 avoid the stated impact; and a plan for implementation. If the impact cannot  
306 reasonably be avoided, the plan shall include a description of actions that will be  
307 taken to minimize the stated impact and a plan for implementation. If neither  
308 avoidance nor minimization is reasonably practicable, the plan shall include a  
309 description of other measures that may be taken to offset the stated impact; and a  
310 plan for implementation.

311 B. Mitigation measures for significant adverse impacts to wildlife shall include:

312 1. For state-listed T&E wildlife, the applicant shall take all reasonable measures  
313 to avoid significant adverse impacts, or shall demonstrate in the mitigation plan  
314 what significant adverse impacts cannot practicably be avoided and why  
315 additional proposed actions are reasonable. These additional proposed actions  
316 may include best practices to avoid, minimize, or offset adverse impacts to  
317 resources analyzed pursuant to 9VAC15-70-40 A or 9VAC15-70-40 C.

318 2. For proposed projects where the disturbance zone is located on or within one-  
319 half (1/2) mile of a known or potential sea turtle nesting beach, the applicant shall  
320 take all reasonable measures to avoid significant adverse impacts or shall  
321 demonstrate in the mitigation plan what significant adverse impacts cannot  
322 practicably be avoided, and why additional proposed mitigation actions are  
323 reasonable. Mitigation measures shall include the following:

- 324 a. Avoiding construction within likely sea turtle crawl or nesting habitats  
325 during the turtle nesting and hatching season (May 20 - October 31). If  
326 avoiding construction during this period is not possible, then conducting daily  
327 crawl surveys of the disturbance zone (May 20 - August 31) and one (1) mile  
328 beyond the northern and southern reaches of the disturbance zone  
329 (hereinafter "sea turtle nest survey zone") between sunrise and 9:00 a.m. by

qualified individuals who have the ability to distinguish accurately between nesting and non-nesting emergencies.

b. If construction is scheduled during the nesting season, then including measures to protect nests and hatchlings found within the sea turtle nest survey zone.

c. Minimizing nighttime construction during the nesting season, and designing project lighting during the construction and operational phases to minimize impacts on nesting sea turtles and hatchlings.

3. For projects located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map for which the tallest point of the built structures exceeds 200 feet, contribute \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof, to a fund designated by the department in support of scientific research investigating the impacts of projects in CAPZ on avian resources.

C. Mitigation measures for significant adverse impacts to historic resources shall include:

1. Significant adverse impacts to VLR-eligible or VLR-listed architectural resources shall be minimized, to the extent practicable, through design of the combustion energy project or the installation of vegetative or other screening.

2. If significant adverse impacts to VLR-eligible or VLR-listed architectural resources cannot be avoided or minimized such that impacts are no longer significantly adverse, then the applicant shall develop a reasonable and proportionate mitigation plan that offsets the significantly adverse impacts and has a demonstrable public benefit and benefit for the affected or similar resource.

3. If any identified VLR-eligible or VLR-listed archaeological site cannot be avoided or minimized to such a degree as to avoid a significant adverse impact, significant adverse impacts of the project will be mitigated through archaeological data recovery.

#### **9VAC15-70-70. Site plan and context map requirements.**

A. The applicant shall submit a site plan that includes maps showing the physical features, topography and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient to show, and shall include, the following: (i) the boundaries of the site; (ii) the location, height, and approximate dimensions of all existing and proposed infrastructure; (iii) the location, grades, and dimensions of all temporary and permanent on-site and access roads from the nearest county or state maintained road; and (iv) water bodies, waterways, wetlands, and drainage channels.

B. If the project's disturbance zone exceeds 10 acres, the applicant shall submit a context map including the area encompassed by the site and within two miles of the site boundary. The context map shall show known state and federal resource lands and other protected areas, Coastal Avian Protection Zones, state roads, waterways, locality boundaries, forests, and open spaces.

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375 **9VAC15-70-80. Combustion energy project design standards.**

376 The design and installation of the combustion energy project shall incorporate any  
377 requirements of the mitigation plan that pertain to design and installation, if a mitigation  
378 plan **is required** pursuant to 9VAC15-70-50.  
379

380 **9VAC15-70-90. Public participation.**

381 A. Before the initiation of any construction at the combustion energy project, the  
382 applicant shall comply with this section. The owner or operator shall first publish a notice  
383 once a week for two consecutive weeks in a major local newspaper of general circulation  
384 informing the public that he intends to construct and operate a project eligible for a  
385 permit by rule. No later than the date of newspaper publication of the initial notice, the  
386 owner or operator shall submit to the department a copy of the notice along with  
387 electronic copies of all documents that the applicant plans to submit in support of the  
388 application. The notice shall include:

- 389 1. A brief description of the proposed project and its location, including the  
390 approximate dimensions of the site, approximate number and configuration of  
391 systems, and approximate maximum height of systems;  
392 2. A statement that the purpose of the public participation is to acquaint the  
393 public with the technical aspects of the proposed project and how the standards  
394 and the requirements of this chapter will be met, to identify issues of concern, to  
395 facilitate communication, and to establish a dialogue between the owner or  
396 operator and persons who may be affected by the project;  
397 3. Announcement of a 30-day comment period in accordance with subsection C  
398 of this section, and the name, telephone number, address, and email address of  
399 the applicant who can be contacted by the interested persons to answer  
400 questions or to whom comments shall be sent;  
401 4. Announcement of the date, time, and place for a public meeting held in  
402 accordance with subsection D of this section; and  
403 5. Location where copies of the documentation to be submitted to the department  
404 in support of the permit by rule application will be available for inspection.

405 B. The owner or operator shall place a copy of the documentation in a location  
406 accessible to the public during business hours for the duration of the 30-day comment  
407 period in the vicinity of the proposed project.

408 C. The public shall be provided at least 30 days to comment on the technical and  
409 the regulatory aspects of the proposal. The comment period shall begin no sooner than  
410 15 days after the applicant initially publishes the notice in the local newspaper.

411 D The applicant shall hold a public meeting not earlier than 15 days after the  
412 beginning of the 30-day public comment period and no later than seven days before the  
413 close of the 30-day comment period. The meeting shall be held in the locality or, if the  
414 project is located in more than one locality, in a place proximate to the location of the  
415 proposed project.

416 E. For purposes of this chapter, the applicant and any interested party who submits  
417 written comments on the proposal to the applicant during the public comment  
418 period or who signs in and provides oral comments at the public meeting shall be  
419 deemed to have participated in the proceeding for a permit by rule under this  
420 chapter and pursuant to § 10.1-1197.7 B of the Code of Virginia.

421  
422  
423 **9VAC15-70-100. Change of ownership, project modifications, termination.**

424 A. Change of ownership. A permit by rule may be transferred to a new owner or  
425 operator if:

426 1. The department receives notification of the change of ownership within 30  
427 days of the transfer; and

428 2. The notice includes written agreement by the new owner or operator to  
429 comply with all requirements of the existing permit by rule and the date on which  
430 permit responsibility is transferred to the new owner or operator.

431 B. Project modifications. Projects subject to Part II of this chapter may be modified  
432 as follows:

433 1. Project modifications that do not increase the project's disturbance zone  
434 by more than an additional 10 acres, cause the tallest point of the built  
435 structures to exceed 200 feet, or newly involve utilizing or demolishing a  
436 building over 50 years of age may occur without notice to the Department.  
437 No fee will be levied for these modifications.

438 2. If, however, the project modification involves increasing the disturbance  
439 zone by more than 10 additional acres, increasing the height of the tallest  
440 point of the built structures so that it now exceeds 200 feet, or newly  
441 utilizing or demolishing a building over 50 years of age, the owner or  
442 operator shall furnish to the department new certificates prepared by a  
443 professional engineer, new documentation required under 9VAC15-70-30,  
444 and the appropriate fee in accordance with 9VAC15-70-110. The  
445 department shall review the received modification submittal pursuant to  
446 this subparagraph in accordance with the provisions of subsection B of  
447 9VAC15-70-30.

448 C. Permit by rule termination. The department may terminate the permit by rule  
449 whenever the department finds that:

450 1. The applicant has knowingly or willfully misrepresented or failed to disclose a  
451 material fact in any report or certification required under this chapter; or

452 2. After the department has taken enforcement actions pursuant to 9VAC15-70-  
453 140, the owner or operator persistently operates the project in significant violation  
454 of the project's mitigation plan.

455 Prior to terminating a permit by rule pursuant to subdivision 1 or 2 of this subsection,  
456 the department shall hold an informal fact-finding proceeding pursuant to § 2.2-4019 of  
457 the Virginia Administrative Process Act in order to assess whether to continue with  
458 termination of the permit by rule or to issue any other appropriate order. If the  
459 department determines that it should continue with the termination of the permit by rule,  
460 the department shall hold a formal hearing pursuant to § 2.2-4020 of the Virginia  
461 Administrative Process Act. Notice of the formal hearing shall be delivered to the owner  
462 or operator. Any owner or operator whose permit by rule is terminated by the department  
463 shall cease operating his combustion energy project.

464  
465 **9VAC15-70-110. Fees for projects subject to Part II of this chapter.**

466 A. Purpose. The purpose of this section is to establish schedules and procedures  
467 pertaining to the payment and collection of fees from any applicant seeking a new permit

by rule or a modification to an existing permit by rule for a combustion energy project subject to Part II (9VAC15-70-30 et seq.) of this chapter.

B. Permit fee payment and deposit. Fees for permit by rule applications or modifications shall be paid by the applicant as follows:

1. Due date. All permit application fees or modification fees are due on submittal day of the application or modification package.

2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ" and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 1104, Richmond, VA 23218.

3. Incomplete payments. All incomplete payments shall be deemed nonpayments.

4. Late payment. No application or modification submittal will be deemed complete until the department receives proper payment.

C. Fee schedules. Each application for a permit by rule and each application for a modification of a permit by rule is a separate action and shall be assessed a separate fee, except as noted in 9VAC15-70-100 B 1. The amount of the permit application fee is based on the costs associated with the permitting program required by this chapter. The fee schedules are shown in the following table:

Type of Action	Fee
Permit by rule application	\$8000
Permit by rule modification	\$4000

D. Use of fees. Fees are assessed for the purpose of defraying the department's costs of administering and enforcing the provisions of this chapter including, but not limited to, permit by rule processing, permit by rule modification processing, and inspection and monitoring of combustion energy projects to ensure compliance with this chapter. Fees collected pursuant to this section shall be used for the administrative and enforcement purposes specified in this section and in § 10.1-1197.6 E of the Code of Virginia.

E. Fund. The fees, received by the department in accordance with this chapter, shall be deposited in the Small Renewable Energy Project Fee Fund.

F. Periodic review of fees. Beginning July 1, 2014, and periodically thereafter, the department shall review the schedule of fees established pursuant to this section to ensure that the total fees collected are sufficient to cover 100% of the department's direct costs associated with use of the fees.

#### **9VAC15-70-120. Internet accessible resources.**

A. This chapter refers to resources to be used by applicants in gathering information to be submitted to the department. These resources are available through the Internet; therefore, in order to assist applicants, the uniform resource locator or Internet address is provided for each of the references listed in this section.

B. Internet available resources.

1. The Virginia Landmarks Register, Virginia Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia. Available at the following Internet address: <http://www.dhr.virginia.gov/registers/register.htm>.

2. Professional Qualifications Standards, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, as amended and annotated (48 FR 44716-740, September 29, 1983), National Parks Service, Washington, DC. Available at the following Internet address: [http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm).

3. The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation, Version 2.3, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA. Available at the following Internet address: [http://www.dcr.virginia.gov/natural\\_heritage/ncintro.shtml](http://www.dcr.virginia.gov/natural_heritage/ncintro.shtml).

4. Virginia's Comprehensive Wildlife Conservation Strategy, 2005 (referred to as the Virginia Wildlife Action Plan) , Virginia Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. Available at the following Internet address: <http://www.bewildvirginia.org/wildlifeplan/>.

#### C. Internet applications.

1. Coastal GEMS application, 2010, Virginia Department of Environmental Quality. Available at the following Internet address: <http://www.deq.virginia.gov/coastal/coastalgems.html>.

NOTE: This website is maintained by the department. Assistance and information may be obtained by contacting Virginia Coastal Zone Management Program, Virginia Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219, (804) 698-4000.

2. Natural Landscape Assessment, 2010, Virginia Department of Conservation and Recreation. Available at the following Internet address: for detailed information on ecological cores go to [http://www.dcr.virginia.gov/natural\\_heritage/vclnavnla.shtm](http://www.dcr.virginia.gov/natural_heritage/vclnavnla.shtm). Land maps may be viewed at DCR's Land Conservation Data Explorer Geographic Information System website at <http://www.vaconservedlands.org/gis.aspx>.

NOTE: The website is maintained by DCR. Actual shapefiles and metadata are available for free by contacting a DCR staff person at [vaconslands@dcr.virginia.gov](mailto:vaconslands@dcr.virginia.gov) or DCR, Division of Natural Heritage, 217 Governor Street, Richmond, Virginia 23219, (804) 786-7951.

3. Virginia Fish and Wildlife Information Service 2010, Virginia Department of Game and Inland Fisheries. Available at the following Internet address: <http://www.vafwis.org/fwis/>.

NOTE: This website is maintained by DGIF and is accessible to the public as "visitors", or to registered subscribers. Registration, however, is required for access to resource- or species-specific locational data and records. Assistance and information may be obtained by contacting DGIF, Fish and Wildlife Information Service, 4010 West Broad Street, Richmond, Virginia 23230, (804) 367-6913.

Part III  
Provisions for Projects with Rated Capacity Less Than or Equal to Five Megawatts or  
Meeting Other Specified Criteria

**9VAC15-70-130. Combustion energy projects with rated capacity less than or equal to five megawatts or meeting other specified criteria**

A. The owner or operator of a combustion energy project is not required to submit any notification or certification to the department if the combustion energy project has a rated capacity equal to or less than 500 kilowatts.

B. The owner or operator of a combustion energy project shall notify the department by submitting a certification by the governing body of the locality or localities wherein the project will be located that the project complies with all applicable land use ordinances, if the project meets either of the following criteria:

1. The combustion energy project has a rated capacity greater than 500 kilowatts and less than or equal to five (5) megawatts; or
2. The combustion energy project has a rated capacity greater than five (5) megawatts and meets all of the criteria specified below.
  - a. The combustion energy project has a disturbance zone
    - (i) less than or equal to ten (10) acres; or
    - (ii) greater than 10 acres but utilizes existing parking lots, existing roads, or other previously disturbed areas and any impacts to undisturbed areas do not exceed an additional ten acres;
  - b. The tallest point of the built structures does not exceed 200 feet; and
  - c. If utilizing or demolishing existing buildings, utilizes or demolishes existing buildings
    - (i) less than 50 years of age; or
    - (ii) 50 years of age or older that have been evaluated and determined by DHR within the preceding seven (7) years to be not VLR-eligible.

Part IV  
Enforcement

**9VAC15-70-140. Enforcement.**

The department may enforce the provisions of this chapter and any permits by rule authorized under this chapter in accordance with §§ 10.1-1197.9, 10.1-1197.10, and 10.1-1197.11 of the Code of Virginia. In so doing, the department may:

1. Issue directives in accordance with the law;
2. Issue special orders in accordance with the law;
3. Issue emergency special orders in accordance with the law;
4. Seek injunction, mandamus or other appropriate remedy as authorized by the law;
5. Seek civil penalties under the law; or
6. Seek remedies under the law, or under other laws including the common law.

**DOCUMENTS INCORPORATED BY REFERENCE (9VAC15-70)**

The Natural Communities of Virginia, Classification of Ecological Community Groups, Second Approximation (Version 2.2), 2006, Virginia Department of Conservation and Recreation, Division of Natural Heritage, Richmond, VA.

Virginia's Comprehensive Wildlife Conservation Strategy, 2005, Virginia Department of Game and Inland Fisheries, Richmond, Virginia.